Supreme Court, U. S.
FILED
SEP 25 1979
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1979
No. 79-54

CITY OF LOS ANGELES, et al.,
Petitioners,

vs.

FANCHON BLAKE, et al.,
Respondents.

CITY OF LOS ANGELES, et al.,
Petitioners,

vs.

UNITED STATES,
Respondent.

REPLY BRIEF FOR THE PETITIONERS, THE CITY OF LOS ANGELES, ET AL.

BURT PINES, City Attorney
JOHN B. RICE, Senior
Assistant City Attorney
NEIL CARLTON BAKER,
Deputy City Attorney
1800 City Hall East
200 North Main Street
Los Angeles, California 90012
(213) 485-6380

Attorneys for Petitioners.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1979
No. 79-54

CITY OF LOS ANGELES, et al.,
Petitioners,
vs.
FANCHON BLAKE, et al.,
Respondents.

CITY OF LOS ANGELES, et al.,
Petitioners,
vs.
UNITED STATES,
Respondent.

REPLY BRIEF FOR THE PETITIONERS, THE CITY OF LOS ANGELES, ET AL.

BURT PINES, City Attorney
JOHN B. RICE, Senior
Assistant City Attorney
NEIL CARLTON BAKER,
Deputy City Attorney
1800 City Hall East
200 North Main Street
Los Angeles, California 90012
(213) 485-6380

Attorneys for Petitioners.

SUBJECT INDEX

Page

THE LEGAL QUESTIONS RAISED IN BLAKE v. CITY CAN AND MUST BE ADDRESSED AT THIS TIME 4

THE CASE OF U.S. v. CITY PRESENTS AN IMPORTANT LEGAL ISSUE REGARDING THE SCOPE OF THE DISTRICT COURT'S POWER TO ISSUE PRELIMINARY RELIEF 9

CONCLUSION 13

TABLE OF AUTHORITIES CITED

Cases

Land v. Dollar, 330 U.S. 731 (1947) 5

Larson v. Domestic and Foreign Commerce Corp., 337 U.S. 682 (1949) 5

United States v. Nixon, 418 U.S. 683 (1974). 5

Constitution

United States Constitution, Fourteenth Amendment. 7

Statutes

Omnibus Crime Control and Safe Streets Act of 1968. . . . 3

Title VII of the Civil Rights
Act of 1964, as amended 7

United States Code, Title 42,
§ 3766(c)(2)(E) 10, 13

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-54

CITY OF LOS ANGELES, et al.,

Petitioners,

vs.

FANCHON BLAKE, et al.,

Respondents.

CITY OF LOS ANGELES, et al.,

Petitioners,

vs.

UNITED STATES,

Respondent.

REPLY BRIEF FOR THE PETITIONERS, THE CITY OF LOS ANGELES, ET AL.

The Petitioners, the City of Los Angeles, et al., (hereinafter, "City"), filed a single petition for a writ of certiorari pertaining to the cases of Blake, et al. v. City of Los Angeles, et al., and the United States v. City, et al. While recognizing that the time for consideration of the petition may now be short, the City believes it is necessary to reply briefly to the oppositions filed in these matters.[1/]

Despite a lengthy and detailed Circuit Court opinion and a record resulting from nearly six years of aggressive litigation, the Respondents principally argue regarding the Blake case that it is not ripe for any type of meaningful review. The City contends that the state of the record and the Circuit Court opinion are such that a thorough examination of the legal issues presented in this case is not only possible, but essential at this time.[2/]

Regarding United States v. City, et al., the Respondent erroneously perceives the case as presenting simply a factual question which is not appropriate for review. To the contrary, that case raises an important issue of law concerning the statutory power of the federal courts under the Omnibus Crime Control and Safe Streets Act of 1968.

1/ The City's Petition was filed on July 12, 1979 and the United States' opposition was not received until September 17, 1979.

2/ There is another case now pending before the Court which raises issues which are identical to some of the issues presented in the instant case. See, City of Anniston, Alabama, et al. v. Mack Scott, et al., No. 79-390.

THE LEGAL QUESTIONS RAISED IN BLAKE v. CITY CAN AND MUST BE ADDRESSED AT THIS TIME

The City submits that a careful reading of the opposition briefs reveals a misplaced reliance on general rules regarding the need for finality and a series of specious attempts to create the impression that this case is such a factual maze that the Court cannot meaningfully review the important legal issues that are raised.

The Respondents' principal point is that this case technically involves a non-final judgment because the Circuit Court remanded the matter, and therefore, it is not ripe for review. But the phrase, "remanded for further proceedings" is not magical, and its utterance certainly does not per se preclude review. This Court has long held that the absence of finality will not foreclose it from

reviewing a case where the issues presented are "fundamental to the further conduct of the case." Land v. Dollar, 330 U.S. 731, 734, n.2 (1947); Larson v. Domestic and Foreign Commerce Corp., 337 U.S. 682, 685, n.3 (1949). Moreover, it is firmly established that the purpose of the finality rule is to "promote[] judicial efficiency and [to] hasten[] the ultimate termination of the litigation." United States v. Nixon, 418 U.S. 683, 690 (1974).

There is no doubt that the issues raised here call into question the very legal standards which have been applied to the extensive evidentiary record in this case and which would have to be followed if the case was simply returned to the trial court without further review. Thus, those issues are clearly fundamental to the further processing of this case. Indeed, the issues presented for

review in the instant case are fundamental to the further conduct of innumerable employment discrimination suits.

Moreover, a clarification of these legal issues could either remove the need for a trial or substantially shorten the length of time required for further proceedings. The result would be tremendous savings in terms of time and resources for the judiciary, the litigants, and the public. Thus, the purposes underlying the finality rule would be well served by review at this time.

That this case is now ripe for review is further underscored by the fact that neither the District Court nor the Circuit Court had any difficulty in dealing with the factual record in this case. Contrary to the suggestions of the Respondents, neither of the lower courts expressed the view that there were remaining disputes

as to material facts in the current record which could pose obstacles to meaningful review.

In that regard, it is critical to focus on the actual substance of the Circuit Court's decision. It determined that the City had violated the Equal Protection Clause of the Fourteenth Amendment for the period prior to March 24, 1972. The Circuit Court determined that the City had violated Title VII for the period between March 24, 1972 and July 1, 1973. Finally, the Circuit Court discussed in detail the legal standards it considered applicable to this case and concluded that the evidence presented by the City was insufficient to demonstrate the business necessity for its post-1973 selection devices. (Appendix A to Petition, p. 2, p. 18, and p. 26, n.13.) Such an opinion

lends little, if any, support to the claim that this case is not ripe for review.

In reality, the Blake Respondents recognize the importance of the Circuit Court's opinion. They make reference in their brief to certain recent proceedings before the United States District Court with respect to their motion for a preliminary injunction. (Opposition Brief, pp. 14-16.) The significance for present purposes of those proceedings is that in seeking an injunction, the Respondents maintained that in the wake of the Circuit Court's decision they were presently entitled to the extreme remedy of an order which not only directs the Los Angeles Police Department to hire, but mandates that the hiring be done on a quota basis. As Mr. Hunt, the longtime attorney for the Respondents, stated

on the record:

> "The basic point is that judgment has been determined by the Ninth Circuit for the Plaintiffs, and it's time to get about making up for that mass discrimination." (Emphasis added.) (Tr., July 16, 1979, p. 8, lines 8-10.)

In short, the Respondents' attempts to discourage this Court from granting certiorari do not withstand analysis. It is clear that the legal status of this case and the condition of the factual record provide a firm foundation for a critical review of the legal issues that were addressed with such specificity by the Circuit Court. Such a review is not only possible, but is of vital importance to local governments and law enforcement agencies throughout this country.

THE CASE OF U.S. v. CITY PRESENTS AN IMPORTANT LEGAL ISSUE REGARDING THE SCOPE OF THE DISTRICT COURT'S POWER TO ISSUE PRELIMINARY RELIEF

In opposing the City's petition, the

the United States merely assumes that under 42 U.S.C. § 3766(c)(2)(E) a federal court is limited to determining whether the party has satisfied the stringent traditional requirements for the issuance of a preliminary injunction. Thus, the Respondent argues that since the Circuit Court determined there was no adequate showing of irreparable injury, any further review would involve simply a factual issue. The Respondents' opposition begs the question presented in this case.

The City's contention is that the Circuit Court and the Respondent have far too narrowly defined the power of the federal courts under § 3766(c)(2)(E). That section provides that the courts may grant "such preliminary relief with regard to the suspension or payment of funds as may be otherwise available by law. . . ." (Emphasis added.) The phrase "preliminary

relief" is broad and should be interpreted to permit the federal courts to issue such orders as are appropriate and necessary under the circumstances.

When the district court in this case issued its order against the suspension of federal funds, the City had already been granted summary judgment in Blake v. City. Twenty days later the federal government filed suit against the City of Los Angeles raising several of the same claims that had been resolved in favor of the City in Blake. The court found that it was necessary to stay the United States' action pending complete appellate review of its decision in Blake, not only because certain of the allegations were identical, but because a determination of the various legal issues involved would have a direct and substantial impact on the court's handling of the litigation before it.

Thus, the court's stay was not only appropriate but necessary in order to efficiently and effectively control the highly complex proceedings.[3/]

At the time of the stay order the court had before it uncontradicted evidence that the termination of federal funds would disrupt an on-going and effective program aimed at the control of juvenile gang violence. The court determined that under the circumstances it would halt the suspension of federal funds in order to maintain the status quo and avoid harm to the City's programs until such time as the stay could reasonably be lifted and proceedings with respect to the merits of the United States' case could

---

3/ The propriety of that stay order was not challenged by the United States on appeal.

be resumed. The City maintains that this was an appropriate exercise of the broad power granted to the federal courts under § 3766(c)(2)(E). Since this Court has not addressed the issue of the scope of the federal courts' power under that section, the City urges it to accept this case for review.

CONCLUSION

For all of the foregoing reasons and the arguments contained in its Petition, the City urges that a writ of certiorari issue to review the judgment and decisions of the United States Court of Appeals for the Ninth Circuit in these cases.

Respectfully submitted,

BURT PINES, City Attorney
JOHN B. RICE, Senior Assistant City Attorney
NEIL CARLTON BAKER, Deputy City Attorney

Attorneys for Petitioners.

Of Assistance to Counsel:
Ruth Jacoby